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271 NLRB No. 103

D--2009
Warren, MI

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

RONALD A. HINTZ AND LENORE HINTZ, A PARTNERSHIP d/b/a HINTZ'S RESTAURANT AND LOUNGE

and

Case 7-CA-16165

LOCAL 24, HOTEL MOTEL, RESTAURANT EMPLOYEES COOKS AND BARTENDERS UNION, AFL-CIO

SUPPLEMENTAL DECISION AND ORDER

On 26 September 1979 Administrative Law Judge Jerry B. Stone issued his decision in the above-entitled proceeding in which he concluded, inter alia, that the Respondent had violates Section 8(a)(1) and (5) of the Act by unilaterally discontinuing its payments into the health and welfare fund as required by the collective-bargaining agreement between the Respondent and Local 24, Hotel, Motel, Restaurant Employees, Cooks and Bartenders Union, AFL--CIO (the Union), effective from 1 January 1976 through 31 December 1978. No exceptions having been filed, the National Labor Relations Board on 15 November 1979 adopted the findings and conclusions of the judge as contained in his decision and ordered the Respondent to make whole its employees by making all health and welfare fund payments as required by the collective-bargaining agreement. Thereafter, on 26 July 1980 the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.[1] A controversy having arisen over the amount of health and welfare fund payments due under the

[1] Member Hunter did not participate in the unfair labor practice proceeding. In view of the Sixth Circuit's enforcement of the Board's Order, he accepts those rulings as res judicata.

Board's Order, as enforced by the court, the Regional Director for Region 7 on 22 December 1983 issued and duly served on the Respondent a backpay specification and notice of hearing alleging the amount of payments due to the Union's health and welfare fund and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. On 16 January 1984 the Respondent filed a document entitled ''Answer to Specification'' stating that Ronald A. Hintz is the only person doing business as Hintz's Restaurant and Lounge and that Lenore Hintz was not a partner in the business. Further, the Respondent states that it neither admits nor denies the allegations.

On 18 January 1984, in confirmation of a 17 January 1984 conversation between Supervisory Compliance Officer Harris B. Berman and the Respondent's counsel, the Regional Director forwarded a letter to the Respondent's counsel reiterating that the Respondent's answer was inadequate, extending the time limit for filing an answer to 6 February 1984, and advising the Respondent's counsel that the instant motion would be filed if a proper answer was not filed by that date. The Respondent filed no answer other than the original answer filed on 16 January 1984.

On 5 March 1984 counsel for the General Counsel filed directly with the Board in Washington, D.C., motions to transfer the Case to the Board and for summary judgment in accordance with the specification. On 7 March 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause on or before 21 March 1984 why the General Counsel's motion shoud not be granted. On 29 March 1984 by letter dated 22 March 1984 the Respondent's counsel again raised the argument that Lenore Hintz was not a partner in Hintz's Restaurant and Lounge.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sectioon 102.54 of the Board's Rules and Regulations provides in pertinent part as follows:

> (a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto . . . .
> (b) . . . The respondent shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification denied. . . . As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. . . .
> (c) . . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by subsection (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting said allegation.

The backpay specification, issued and served on the Respondent, specifically states that the Respondent shall, within the 15 days from the date of the specification, file with the Regional Director for Region 7 an answer to the specification. The backpay specification further states that, if the answer fails to deny without adequate explanation the allegations of the specification in the manner required under the Board's Rules and Regulations, such allegations shall be deemed to be admitted to be true and the Respondent precluded from introducing any evidence controverting them. According to the Motion for Summary Judgment, by an answer filed 16 January 1984, the Respondent states that it neither admits nor denies the allegations but leaves the General Counsel to his proofs and asserts that Lenore Hintz is not a partner in the Respondent's partnership.

In asserting that Lenore Hintz is not a partner, the Respondent is attempting to relitigate matters already litigated and decided by the Board and court of appeals. Further, the Respondent's answer does not specifically deny the allegations as required by Section 1C2.54(b) of the Board's Rules and Regulations. The failure to so deny is not adequately explained. Therefore, in accordance with the rules set forth above, the allegations in the backpay specification are deemed to be admitted as true and the Board so finds.

Accordingly, the Board grants the Motion for Summary Judgment and concludes that the health and welfare fund payments owed the Union are as stated in the computations of the specification. The Board hereby orders that payment thereof be made by the Respondent as set forth below.

ORDER

The National Labor Relations Board orders that the Respondent, Ronald A. Hintz and Lenore Hintz, a partnership d/b/a Hintz's Restaurant and Lounge, Warren, Michigan, its officers, agents, successors, and assigns, shall make whole the employees in the appropriate unit by making payments to the Union's health and welfare fund in the amounts set forth for each employee as listed in ''Schedule B,'' attached to the backpay specification. The total amount of

these payments is $8086.80 as set forth in ''Schedule C'' also attached to the backpay specification.[2]

Dated, Washington, D.C. 31 July 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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[2] Because the provisions of the employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our ''make-whole'' remedy. These amounts may be determined, depending on the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of any loss directly atrributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative cost, etc., but not collateral losses. See Merryweather Optical Co., 240 NLRB 1213, 1216 (1979).